

SEP 16 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KUI WANG CHEN,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 06-74020

Agency No. A77-283-179

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted September 8, 2008^{**}

Before: TASHIMA, SILVERMAN, and N.R. SMITH, Circuit Judges.

Kui Wang Chen, a native and citizen of China, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his second motion to

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

reopen deportation proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), and we deny the petition for review.

An alien who is subject to a final order of removal is limited to filing one motion to reopen removal proceedings, and that motion must be filed within 90 days of the date of entry of a final order of removal. 8 U.S.C. § 1229a(c)(7)(A), (C)(i); 8 C.F.R. § 1003.2(c)(2). Because Chen's second motion to reopen was filed beyond the 90 day deadline, the BIA did not abuse its discretion in denying petitioner's motion to reopen.

We also conclude that the BIA's denial of the motion to reopen did not violate Chen's due process rights because he does not allege any error by the BIA. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) ("To prevail on a due process challenge . . . [a petitioner] must show error and substantial prejudice.").

Because the time and number bar are dispositive, we do not address Chen's remaining contentions.

PETITION FOR REVIEW DENIED.